

II. CASE BACKGROUND

5. Facebook is a social networking site founded in February 2004.¹ Facebook developed and operates one of the most popular social networking sites on the Internet that connects people with their friends, family, and co-workers.² Presently, Facebook has over 800 million active users.³

6. Power began operations in 2006.⁴ According to its founder, Mr. Steven Vachani, in late 2008, Power offered browsing capabilities that provided “users value added features across their Internet experience.”⁵

7. In its First Amended Complaint (the “Complaint”), Facebook alleges that starting in late 2008 and continuing into early 2009 (the “Relevant Period”), Power engaged in numerous unauthorized activities, including:

- a. conducting commercial activity on Facebook’s website;
- b. using user accounts to access Facebook’s computer systems;
- c. storing Facebook user passwords outside Facebook’s network, and outside the control of Facebook’s security staff; and
- d. using automated scripts to collect information from or otherwise interact with Facebook’s website or to access Facebook’s computers to scrape user data and display it on Power’s website.⁶

8. As a result of these alleged unauthorized activities during the Relevant Period, Facebook claims that Power violated several laws, including the:

- a. Controlling the Assault of Non-Solicited Pornography And Marketing (“CAN-SPAM”) Act (15 U.S.C., Section 7701);
- b. Computer Fraud and Abuse Act (18 U.S.C., Section 1030); and

¹ <http://www.facebook.com/facebook>.

² First Amended Complaint, filed January 13, 2009, page 2.

³ Declaration of Mr. Ryan McGeehan, dated November 13, 2011, page 1.

⁴ Deposition of Mr. Steven Vachani, dated July 20, 2011, page 21.

⁵ POWER 2011.02.03.0000082.

⁶ First Amended Complaint, filed January 13, 2009, pages 10-11. The Complaint (page 3) indicates Power’s unauthorized activities continued as of the filing date.

Court of Appeals No. 13-17154, 13-17102

Facebook, Inc v. Power Ventures, Inc, et al.

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APPELANTS' SUPPLEMENTAL EXCERPTS OF RECORD

Date	Dkt. No.	Page No.	Document
12/19/2011	N/A	1-2	Expert report prepared for Facebook by Richard J. Ostiller of Navigant Consulting, Inc. (excerpt)

FACEBOOK, INC.,

PLAINTIFF,

V.

POWER VENTURES, INC. DBA POWER.COM, ET AL,

DEFENDANTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CASE NO. C-08-05780-JW

EXPERT REPORT OF RICHARD J. OSTILLER

NAVIGANT CONSULTING, INC.

DECEMBER 19, 2011



RICHARD J. OSTILLER

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